

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

GARY ARTHUR HOLYOKE,

Plaintiff,

v.

6:23-CV-1557
(MAD/MJK)

S.S.I., et al.,

Defendants.

GARY ARTHUR HOLYOKE, Plaintiff, pro se

MITCHELL J. KATZ, U.S. Magistrate Judge

DECISION and ORDER

On December 12, 2023, plaintiff Gary Arthur Holyoke commenced this action, pro se, by filing a complaint and a motion to proceed in forma pauperis (“IFP”). (Dkt. Nos. 1, 2). On January 2, 2024, Magistrate Judge Andrew T. Baxter issued an Order and Report-Recommendation (“ORR”) granting plaintiff’s IFP motion and recommending that plaintiff’s complaint be dismissed without prejudice and with leave to amend as to defendants City of Utica and Oneida County. (Dkt. No. 7). Judge Baxter otherwise recommended dismissing plaintiff’s complaint without prejudice but without leave to amend as to all other defendants. (*Id.*).

This case was reassigned to me as magistrate judge for all further proceedings on January 5, 2024. (Dkt. No. 8). Before the district court had an opportunity to review Judge Baxter’s ORR, plaintiff filed an amended complaint on February 12, 2024. (Dkt. No. 16).

On February 20, 2024, U.S. District Judge Mae A. D'Agostino issued an order adopting Judge Baxter's ORR in its entirety. (Dkt. No. 17). Specifically, Judge D'Agostino ordered that plaintiff's complaint be dismissed without prejudice but without leave to amend as against named defendants S.S.I., Medicare, I.R.S., M.V.H.S., and M.V.C.S. (*Id.*). Judge D'Agostino further ordered that plaintiff's complaint against named defendants City of Utica and Oneida County be dismissed without prejudice. (*Id.*). Last, Judge D'Agostino referred plaintiff's amended complaint to me for review pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A. (*Id.*).

Plaintiff's amended complaint, which is presently before this court on review, does not name as defendants any of the entities identified in the original complaint. (Dkt. No. 16). It does, however, present, at first blush, as another frivolous and incoherent pleading that likely does not meet the requirements of Rule 8 of the Federal Rules of Civil Procedure. (*Id.*). Nevertheless, mindful of the liberal pleading standard afforded pro se litigants, and considering that plaintiff's amended complaint was prepared without the benefit of Judge D'Agostino's February 2024 order, the court will give plaintiff forty-five (45) days within which to amend his amended complaint in order to meet the pleading requirements required of the Federal Rules of Civil Procedure, as well as comply with Judge D'Agostino's findings in her February 2024 order. If plaintiff chooses to file a second amended complaint, this court will review it and make a recommendation at that time. If plaintiff does not submit a second amended complaint, I will base my recommendation on the amended complaint. Should plaintiff

submit a second amended complaint, it must be a **complete pleading** that will supercede and replace the previous filings.

WHEREFORE, based on the findings above, it is

ORDERED, that plaintiff shall have forty-five (45) days from the date of this decision and order to amend his amended complaint (or to request an extension of time to do so), and it is

ORDERED, that if plaintiff chooses to file a second amended complaint, it must be a **complete pleading**, and he must restate all his allegations, including any new facts in the second amended complaint. Any second amended complaint will supercede the previous filings, and plaintiff may **not** incorporate any part of the original or amended complaint by reference, and it is

ORDERED, that when plaintiff files his second amended complaint – or upon the expiration of plaintiff's time to do so – the Clerk shall send this case back to me for further review.¹

Dated: February 26, 2024



Mitchell J. Katz
U.S. Magistrate Judge

¹ If the plaintiff does not file a second amended complaint, this court will make appropriate recommendations to the district judge with respect to the amended complaint.